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In the Supreme Court of the United States

STACY FRY AND BRENT FRY, AS NEXT FRIENDS OF MINOR E.F., PETITIONERS

v.

NAPOLEON COMMUNITY SCHOOLS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether petitioners' civil action seeking money damages for past violations of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 constitutes a "civil action * * * seeking relief that is also available under [the Individuals with Disabilities Education Act (IDEA)]" for purposes of the IDEA's exhaustion requirement, 20 U.S.C. 1415(*l*).

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This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

STATEMENT

This case involves the relationship between litigation under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, and the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, on the one hand, and the administrative process set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, on the other. Petitioners sued respondents for money damages, alleging past violations of the ADA and Rehabilitation Act in connection with respondents' refusal to allow their daughter to be accompanied by her trained service dog while attending school. Petitioners' complaint did not invoke the

IDEA's substantive standards or seek relief under that statute's remedial provisions. The district court dismissed the action because petitioners had failed to exhaust the IDEA's administrative process, as required for certain types of claims under 20 U.S.C. 1415(*l*). Pet. App. 50. A divided panel of the court of appeals affirmed. *Id.* at 20.

1. a. The ADA and Rehabilitation Act protect individuals with disabilities from discrimination. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132. The Department of Justice (DOJ) has promulgated implementing regulations requiring, *inter alia*, that a public entity make "reasonable modifications [to its] policies, practices, or procedures [that are] necessary to avoid discrimination." 28 C.F.R. 35.130(b)(7). As relevant here, the regulations also generally provide that such entities "shall modify [their] policies, practices, or procedures to permit the use of a service animal by an individual with a disability." 28 C.F.R. 35.136(a). Title II authorizes private citizens to bring suits for money damages to redress violations of its requirements. *Tennessee* v. *Lane*, 541 U.S. 509, 517 (2004); see 42 U.S.C. 12133.

The Rehabilitation Act prohibits discrimination on the basis of disability in programs by recipients of federal financial assistance. Section 504 of the Act states that "[n]o otherwise qualified individual with a disability * * * shall, solely by reason of her or his disability, be excluded from the participation in, be

denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a); see 28 C.F.R. 41.51(a); 34 C.F.R. 104.4(a). Section 504 served as a model for Title II of the ADA, and the same liability standards generally apply to both statutes. See, *e.g.*, *Duvall* v. *County of Kitsap*, 260 F.3d 1124, 1135-1136 (9th Cir. 2001); 42 U.S.C. 12201(a). The Rehabilitation Act authorizes private citizens to bring suits for money damages to redress violations of Section 504. See 29 U.S.C. 794a(a)(2).

b. The IDEA (formerly known as the Education of the Handicapped Act) provides federal grants to States "to assist them to provide special education and related services to children with disabilities." 20 U.S.C. 1411(a)(1). States receiving federal funds must make a "free appropriate public education" (FAPE) available to every child with a disability residing in the State. 20 U.S.C. 1412(a)(1)(A). As the "centerpiece" of this requirement, school districts must provide each eligible child with an "individualized education program" (IEP). *Honig* v. *Doe*, 484 U.S. 305, 311 (1988). A proper IEP must comply with specific statutory requirements and establish a program of special education and related services that is designed to meet the "unique needs" of the child. *Ibid.*; 20 U.S.C. 1412(a)(4); 34 C.F.R. 300.22, 300.34. The IDEA "contemplates that such education will be provided where possible in regular public schools, * * * but the Act also provides for placement in private schools at public expense where this is not possible." *School Comm. of Burlington* v. *Department of Educ.*, 471 U.S. 359, 369 (1985); see 20 U.S.C. 1412(a)(10)(B).

The IDEA requires school districts to work collaboratively with parents to formulate an appropriate IEP for each child with a disability.[1] But Congress anticipated that this process would not always produce a consensus, and it established procedures by which parents can seek administrative and judicial review of a school district's IDEA-related determinations. See 20 U.S.C. 1415(f)-(j); *Burlington*, 471 U.S. at 368-369.

Parents who are not satisfied with a proposed IEP, or with other matters relating to the "identification, evaluation, or educational placement of the child, or the provision of a [FAPE]," must first notify the school district of their complaint. 20 U.S.C. 1415(b)(6); see 20 U.S.C. 1415(b)(7). If the dispute cannot be resolved through established procedures, the parents may obtain "an impartial due process hearing" before a state or local educational agency. 20 U.S.C. 1415(f)(1)(A)-(B). The losing party may then seek judicial review of a final administrative decision in either state or federal district court. 20 U.S.C. 1415(i)(2)(A). The court receives the records of the administrative proceedings, and it may hear additional evidence before rendering its decision. 20 U.S.C. 1415(i)(2)(C).

The IDEA empowers courts adjudicating IDEA disputes to "grant such relief as the court determines is appropriate." 20 U.S.C. 1415(i)(2)(C)(iii). This Court and the courts of appeals have generally recognized that the relief available under the IDEA is equitable in nature and encompasses both (1) future spe-

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[1] See, *e.g.*, 20 U.S.C. 1400(d)(1)(B), 1414(b)(2)(A), (d)(1)(B), (3)(A)(ii), (3)(D), (4)(A)(ii)(III), and (e), 1415(b)(1), (3)-(5), and (f)(3)(E)(ii)(II).

cial education and related services that ensure a FAPE or redress past denials of a FAPE, and (2) financial compensation to reimburse parents for past educational expenditures that should have been borne by the State. See, *e.g.*, *Burlington*, 471 U.S. at 369-370; *Sellers* v. *School Bd. of Manassas*, 141 F.3d 524, 527 (4th Cir.), cert. denied, 525 U.S. 871 (1998). But this Court has expressly distinguished such relief from compensatory "damages," *Burlington*, 471 U.S. at 370-371, and the courts of appeals have generally held that such damages are *not* available under the IDEA, see, *e.g.*, *Polera* v. *Board of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 485-486 (2d Cir. 2002) (citing cases); *Charlie F.* v. *Board of Educ. of Skokie Sch. Dist.*, 98 F.3d 989, 991 (7th Cir. 1996); but see *Salley* v. *St. Tammany Parish Sch. Bd.*, 57 F.3d 458, 466 (5th Cir. 1995) (awarding nominal damages).

c. In *Smith* v. *Robinson*, 468 U.S. 992 (1984), this Court held that the IDEA's predecessor statute was the *exclusive* means of seeking relief for claims alleging the violation of rights to special education specifically guaranteed by that statute. *Id.* at 1012-1013, 1019, 1021. Congress overturned *Smith* by enacting the Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, 100 Stat. 796. Section 3 of that statute—now codified at 20 U.S.C. 1415(*l*)—was intended to "reaffirm * * * the viability of [S]ection 504, 42 U.S.C. 1983, and other statutes as separate vehicles for ensuring the rights of handicapped children." H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985) (House Report) (explaining goal of overruling *Smith*); *id.* at 6-7 (same); S. Rep. No. 112, 99th Cong., 1st Sess. 2, 15 (1985) (Senate Report) (same).

Section 1415(*l*) provides, in relevant part, as follows:

> Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], title V of the Rehabilitation Act [including Section 504], or other Federal laws protecting the rights of children with disabilities, except that *before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the [administrative] procedures under [the IDEA, 20 U.S.C. 1415(f) and (g)] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA].*

20 U.S.C. 1415(*l*) (emphasis added).

The portion of Section 1415(*l*) italicized above sets forth the circumstances in which a plaintiff bringing suit under Title II or Section 504 must first exhaust administrative remedies under the IDEA. That exhaustion requirement is the subject of the petition for certiorari in this case.

2. E.F. is a child with a severe form of cerebral palsy that substantially limits her motor skills and mobility. Pet. App. 3; Resp. App. 6.[2] In the 2009-2010 school year, E.F. attended kindergarten at Ezra Eby Elementary School, which is within the Napoleon Community Schools and Jackson County Intermediate School District (respondents here, along with the principal of Ezra Eby, Pamela Barnes). Pet. App. 4; Resp. App. 5.

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[2] The facts discussed in this brief are drawn from petitioners' complaint and the discussion of the complaint in the decisions below.

In 2009, pursuant to a prescription from E.F.'s doctor, E.F.'s parents and E.F. (collectively, petitioners) obtained Wonder, a trained service dog, to assist E.F. with various functions of ordinary life. Pet. App. 3-4; Resp. App. 2, 6-7. In the fall of 2009 and again in January 2010, respondents informed petitioners that E.F. could not bring Wonder to school. Resp. App. 2, 8. Respondents told E.F.'s parents that E.F.'s then-existing IEP already met her "physical and academic needs." Pet. App. 4; Resp. App. 8. At the time, respondents had a policy that permitted an individual's use of a guide dog in school, but they refused to modify that policy to permit service animals (like Wonder) more generally. See Pet. App. 27; Resp. App. 3, 9.

In April 2010, respondents permitted E.F. to attend school with Wonder for the remainder of the school year. Pet. App. 4; Resp. App. 8. During that time, however, respondents limited E.F.'s use of Wonder, thereby preventing E.F. from participating in certain school activities. Pet. App. 4; Resp. App. 8-9. At the end of the school year, respondents informed petitioners that they would not allow Wonder to accompany E.F. to school during the 2010-2011 school year. Pet. App. 4; Resp. App. 9.

In response, E.F.'s parents removed E.F. from Ezra Eby and home-schooled her for the 2010-2011 and 2011-2012 school years. Resp. App. 9. E.F.'s parents also filed a complaint with the U.S. Department of Education's Office for Civil Rights (OCR) alleging that respondents violated Title II and Section 504. Pet. App. 4; Resp. App. 9. In May 2012, OCR determined that respondents' denial of E.F.'s use of her service dog violated both statutes. Pet. App. 4; Resp. App. 10. In response, respondents agreed to allow

Wonder to accompany E.F. to school. *Ibid.* But after E.F.'s father met with Principal Barnes to discuss E.F.'s return to Ezra Eby, her parents developed "serious concerns that the administration would resent [E.F.] and make her return to school difficult." Resp. App. 10. They accordingly found a different public school—in a different district—that welcomed E.F. and Wonder. Pet. App. 4; Resp. App. 10-11. E.F. enrolled in that school the following fall. Resp. App. 10-11.

3. In December 2012, petitioners sued respondents for violating (among other statutes) Title II of the ADA and Section 504 of the Rehabilitation Act. See Resp. App. 1-22. They alleged that respondents had unlawfully refused to modify their policies to permit E.F. to use her service animal at school between "fall 2009 and spring 2012." Pet. App. 4-5; see Resp. App. 12-19. Petitioners further alleged that E.F. had suffered harm as a result of the discrimination, including "emotional distress and pain, embarrassment, mental anguish, inconvenience, and loss of enjoyment of life." Resp. App. 11-12. In their prayer for relief, petitioners sought a declaration that respondents had violated both statutes, damages to compensate for the harm suffered by E.F., attorneys' fees, and "any other relief [the district] Court deems appropriate." *Id.* at 21. The complaint did not mention the IDEA, allege that E.F. had been denied a FAPE, or seek damages to remedy any violation of that or any other IDEA provision.

In January 2014, the district court dismissed petitioners' complaint without prejudice under Federal Rule of Civil Procedure 12(c). Pet. App. 37-52. The court held that petitioners had failed to comply with

the IDEA's exhaustion provision, 20 U.S.C. 1415(*l*), insofar as they filed the action without first challenging E.F.'s IEP in accordance with the IDEA's administrative procedures. Pet. App. 5, 42-50.

4. A divided panel of the court of appeals affirmed. Pet. App. 1-20.

a. The panel majority interpreted Section 1415(*l*) to "require[] exhaustion when the injuries alleged can be remedied through IDEA procedures, or when the injuries relate to the specific substantive protections of the IDEA." Pet. App. 6; see also *id.* at 3, 10-11 (similar formulations). It explained that petitioners' suit must be dismissed because "[t]he core harms that [petitioners] allege arise from the school's refusal to permit E.F. to attend school with Wonder relate to the specific educational purpose of the IDEA" and because petitioners "could have used IDEA procedures to remedy [those] harms." *Id.* at 6; see *id.* at 10-14, 16.

The panel majority acknowledged that petitioners' action sought money damages, and that such damages are "unavailable" under the IDEA. Pet. App. 17. It nonetheless held that the request for money damages "does not in itself excuse the exhaustion requirement," because that would allow plaintiffs to evade that requirement "simply by appending a claim for damages." *Ibid.* (internal quotation marks omitted).

The panel majority also acknowledged that the IDEA procedures "could *at best* require Ezra Eby Elementary to permit Wonder to accompany E.F. at school," and that such an outcome "would *not* at present be effective in resolving [petitioners'] dispute," both because petitioners no longer sought to enroll E.F. at Ezra Eby and because respondents had al-

ready agreed to permit Wonder to accompany E.F. to Ezra Eby following the OCR's 2012 ruling. Pet. App. 17 (emphasis added). The panel noted that petitioners had not argued that these circumstances rendered exhaustion of IDEA procedures futile, and it thus declined to resolve whether exhaustion should be excused on that ground. *Ibid.* Nonetheless, the court strongly suggested that a futility argument would not succeed, because petitioners had voluntarily enrolled E.F. in a different school outside the district. *Id.* at 17-18.

b. Judge Daughtrey dissented. Pet. App. 21-35. She endorsed the interpretation of Section 1415(*l*) set forth by the Ninth Circuit in *Payne* v. *Peninsula School District*, 653 F.3d 863, 875 (2011) (en banc), cert. denied, 132 S. Ct. 1540 (2012), overruled on other grounds by *Albino* v. *Baca*, 747 F.3d 1162 (9th Cir.), cert. denied, 135 S. Ct. 403 (2014). Pet. App. 27-30. She emphasized that under the Ninth Circuit's approach, "[n]on-IDEA claims that do not seek relief available under the IDEA are not subject to the exhaustion requirement, *even if they allege injuries that could conceivably have been redressed by the IDEA.*" *Id.* at 28 (quoting *Payne*, 653 F.3d at 871). Here, Judge Daughtrey explained, petitioners' Title II and Section 504 claims are based on respondents' failure to grant E.F. equal access to public facilities and programs, not on any failure to protect her education-related rights under the IDEA. *Id.* at 21-22, 25-27.

5. The court of appeals denied rehearing en banc, with Judge Daughtrey dissenting. Pet. App. 53-54.

DISCUSSION

The court of appeals incorrectly affirmed the dismissal of petitioners' ADA and Rehabilitation Act

claims for failure to comply with the IDEA's exhaustion provision, 20 U.S.C. 1415(*l*). The court's decision is at odds with the plain text of Section 1415(*l*), and it deepens an entrenched circuit split over the proper interpretation of that provision. The question presented raises an important and recurring issue that has significant consequences for children with disabilities who seek to vindicate their rights under federal anti-discrimination statutes. This Court should grant certiorari to resolve the split and reverse the decision below.

A. The Court Of Appeals' Decision Was Incorrect

1. The court of appeals erred in holding that petitioners' claims were properly dismissed under Section 1415(*l*). Its interpretation of that provision contravenes the plain text of Section 1415(*l*) and leads to unsound results.

a. Section 1415(*l*) makes clear that the IDEA is not the exclusive mechanism for vindicating the rights of children with disabilities through litigation. It expressly contemplates that aggrieved parties may invoke other statutes—including Title II of the ADA and Section 504 of the Rehabilitation Act—to secure relief for a violation of the substantive standards established in those statutes. 20 U.S.C. 1415(*l*). Section 1415(*l*) places a single restriction on such non-IDEA litigation: It states that potential litigants must exhaust the IDEA's administrative procedures "before the filing of a *civil action* under [Title II, Section 504, or other specified laws] *seeking relief that is also available* under [the IDEA]." 20 U.S.C. 1415(*l*) (emphasis added).

By its plain terms, Section 1415(*l*)'s exhaustion requirement applies only to "civil action[s] * * * seek-

ing relief that is also available under [the IDEA]." 20 U.S.C. 1415(*l*). To determine whether any particular "civil action" triggers that requirement, a court must first determine precisely what "relief" that action is "seeking." *Ibid.* To do so, the court must examine the complaint, and especially the prayer for relief specifically identifying the remedy the plaintiff is asking the court to award. See *Random House Webster's Unabridged Dictionary* 1733 (2d ed. 2001) (*Webster's*) (defining "seek" as, among other things, "to try to obtain," "to ask for," and "[to] request").

Once the court identifies the "relief" the "civil action" is "seeking," the court must then determine whether that requested relief is "available" under the IDEA. 20 U.S.C. 1415(*l*). A form of relief is "available" under the IDEA if it is "readily obtainable" or "accessible" under that statute. *Webster's* 142. That inquiry ultimately turns on whether the IDEA would authorize a court or state agency to award the desired relief if the plaintiff had exhausted administrative remedies or brought suit under the IDEA.

If the requested relief *is* available under the IDEA, the non-IDEA civil action may proceed only if the plaintiff has previously exhausted the IDEA's administrative procedures or if the unexhausted claims are eliminated from the action. 20 U.S.C. 1415(*l*); see, *e.g.*, *Jones* v. *Block*, 549 U.S. 199, 219-224 (2007). But if the requested relief is *not* available under the IDEA, exhaustion is *not* required and the civil action may proceed regardless of whether the plaintiff has previously pursued his or her claim using the IDEA process.

b. This straightforward interpretation of Section 1415(*l*)'s exhaustion requirement follows directly from

the statute's text. As this Court has often emphasized, "when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez* v. *Quarterman*, 555 U.S. 113, 118 (2009).

It also faithfully implements Section 1415(*l*)'s purpose. As noted, Congress enacted Section 1415(*l*) in order to overturn *Smith* v. *Robinson*, 468 U.S. 992 (1984), and "reaffirm * * * the viability of" other antidiscrimination provisions as "*separate* vehicles for ensuring the rights of handicapped children." House Report 4 (emphasis added); see p. 5, *supra*. The exhaustion requirement advances that goal by ensuring that if a plaintiff does not seek relief that is available under the IDEA, he or she may immediately invoke other freestanding federal causes of action that likewise protect the rights of children with disabilities. In such circumstances, there is no need for plaintiffs to expend time and resources engaging in an IDEA administrative process that cannot provide the particular relief that the plaintiff seeks.

Finally, the interpretation of Section 1415(*l*) set forth above advances commonsense principles embodied in this Court's administrative-exhaustion cases more generally. The Court has recognized that exhaustion requirements generally serve the "twin purposes" of "protecting * * * agency authority" and "promoting judicial efficiency." *McCarthy* v. *Madigan*, 503 U.S. 140, 145 (1992). But the Court has also recognized a general exception to such requirements when the agency "lack[s] authority to grant the type of relief requested." *Id.* at 148. In such circumstances, there is no threat to the agency's authority, because the agency lacks the authority to award the requested relief. And requiring exhaustion is also

*in*efficient, insofar as the administrative process cannot grant the plaintiff the desired relief and thus would not eliminate the need for litigation. See *Montana Nat'l Bank of Billings* v. *Yellowstone Cnty.*, 276 U.S. 499, 505 (1928) (noting that exhaustion when an agency lacks authority to grant relief would be "utterly futile"). Section 1415(*l*) reflects these principles and does not require exhaustion of IDEA processes unless the plaintiff is "seeking relief" that is actually "available" in IDEA proceedings.

c. Section 1415(*l*)'s exhaustion requirement does not apply to petitioners' Title II and Section 504 claims. The "REQUEST FOR RELIEF" set forth in petitioners' complaint asks the court to (1) "[e]nter judgment" in petitioners' favor as to both claims; (2) "[i]ssue a declaration" stating that respondents violated E.F.'s rights under both statutes; (3) "[a]ward [E.F.] damages in an amount to be determined at trial"; (4) "[a]ward attorneys' fees pursuant to" the ADA, Rehabilitation Act, and 42 U.S.C. 1988; and (5) "[g]rant any other relief this Court deems appropriate." Resp. App. 21.

None of those forms of relief is "available under [the IDEA]." 20 U.S.C. 1415(*l*). The IDEA does not entitle a plaintiff to obtain a judgment or declaratory relief stating that the defendant violated the ADA or Section 504, and petitioners have not sought a declaration that the IDEA's substantive standards have been violated. Nor does the IDEA entitle a prevailing plaintiff to obtain money damages to compensate for harms suffered as a result of its substantive standards. See pp. 4-5, *supra*. And although the IDEA authorizes an award of attorneys' fees, it does so only

"[i]n any action or proceeding brought under" the IDEA itself. 20 U.S.C. 1415(i)(3)(B)(i).

Finally, the complaint's boilerplate request for "any other relief this Court deems appropriate," Resp. App. 21, cannot reasonably be construed as seeking relief available under the IDEA. As noted above, the IDEA authorizes relief in the form of (1) future special education and related services to ensure a FAPE or redress the past denial of a FAPE, and (2) financial compensation to reimburse parents for past educational expenditures that should have been borne by the State. See pp. 4-5, *supra*. The complaint makes clear that E.F. has successfully integrated into a new school outside respondents' district, and it does not request future educational services or seek reimbursement for past educational expenses. See Resp. App. 10-12, 21.

2. The court of appeals held that Section 1415(*l*) requires a plaintiff to exhaust the IDEA's administrative process whenever "the injuries alleged can be remedied through IDEA procedures." Pet. App. 6. It dismissed petitioners' Title II and Section 504 claims after concluding that they "relate to the specific educational purpose of the IDEA" and thus can be remedied under that statute. *Ibid.* The court was mistaken.

a. Most fundamentally, the court of appeals erred by focusing on whether the harms alleged by the plaintiff are capable of being remedied, in some fashion, by the IDEA. Pet. App. 6, 10. That approach violates the text of Section 1415(*l*). Under that provision, the question is *not* whether the plaintiff has alleged harms that might conceivably be addressed in administrative proceedings or litigation under the

IDEA. Rather, the question mandated by the text is whether the plaintiff's "civil action" is "seeking relief" that the IDEA makes "available." 20 U.S.C. 1415(*l*). The court's approach ignores the statutory language that focuses the exhaustion inquiry on the particular "relief" that the plaintiff's "civil action" actually "seek[s]." *Ibid.*[3]

The court of appeals did not engage in any significant textual analysis justifying its interpretation of Section 1415(*l*). Instead, the court appeared to ground its analysis on a perceived need "to preserve the primacy the IDEA gives to the expertise of state and local agencies" in determining whether a child has been denied a FAPE under the IDEA. Pet. App. 9-10; *id.* at 9-14. But although Section 1415(*l*) preserves an important role for state and local agencies with respect to civil actions seeking relief that *is* "available" under the IDEA—even when the action is brought under other statutes—it does not recognize their "primacy" over actions that do *not* seek such relief. 20 U.S.C. 1415(*l*). Congress enacted Section 1415(*l*) with the specific goal of preserving the viability of non-IDEA causes of action as "separate vehicles" for protecting the rights of children with disabilities. House Report 4. It did not require IDEA procedures to be exhausted in circumstances where the plaintiff seeks only relief that cannot be awarded under the IDEA.

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[3] The IDEA's exhaustion requirement differs from that of the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e(a), which requires any prisoner challenging conditions of confinement to exhaust "such administrative remedies *as are available*" before instituting any suit, regardless of whether the lawsuit seeks relief that the administrative proceedings could provide. See *Booth* v. *Churner*, 532 U.S. 731, 738-739 (2001).

Notably, the court of appeals acknowledged that the relief actually sought by petitioners' civil action—primarily, money damages—is "unavailable" under the IDEA. Pet. App. 17. That should have ended the inquiry. The court concluded otherwise by asserting that focusing exclusively on the requested relief would allow plaintiffs to "evade the exhaustion requirement simply by appending a claim for money damages." *Ibid.* (internal quotation marks omitted). The court was mistaken. Under Section 1415(*l*)'s plain language, a plaintiff who seeks relief that *is* available under the IDEA cannot avoid exhaustion simply by also tacking on a request for damages. The exhaustion requirement unambiguously applies to any claim for relief that is available under the IDEA, and the plaintiff would not be able to proceed on any such claim. See, *e.g.*, *Jones*, 549 U.S. at 219-224 (permitting dismissal of unexhausted claims); *Cassidy* v. *Indiana Dep't of Corr.*, 199 F.3d 374, 376-377 (7th Cir. 2000).

b. This case illustrates the inefficient and unsound results that flow from the court of appeals' interpretation of Section 1415(*l*). At the time petitioners filed this action, respondents had already agreed to allow Wonder to accompany E.F. to Ezra Eby for the 2012-2013 school year, and petitioners had already decided to enroll E.F. in a different school in a different district. See p. 8, *supra*. Respondents were no longer providing E.F. with an education, and petitioners did not request compensatory special education or related services. There was therefore no live dispute between the parties as to the content of E.F.'s ongoing IEP.

In these circumstances, it makes no sense to require petitioners to engage in the IDEA administrative process before filing suit against respondents.

The purpose of that administrative process is to resolve disputes over a child's ongoing educational program under the IDEA, not to adjudicate whether a school violated Title II and Section 504 at some time in the past. Given that respondents had already agreed that Wonder would be permitted to accompany E.F. to school—and that petitioners did not seek any further education-related services from respondents—there was no need for the IDEA process to consider whether Wonder should be part of E.F.'s IEP or whether forbidding Wonder from accompanying E.F. would deny her a FAPE. Even if petitioners had participated in the IDEA administrative process—and had prevailed on every issue—petitioners would have had to file exactly the same suit under Title II and Section 504 in order to obtain their desired relief. See Pet. App. 17 (acknowledging this point). Requiring petitioners and respondents to engage in the IDEA process as a precondition for litigating their Title II and Section 504 claims in court would waste time and resources without offering any chance of resolving their actual dispute. Congress did not intend such a result.

B. The Courts Of Appeals Are Split As To The Proper Interpretation Of Section 1415(*l*)'s Exhaustion Requirement

The decision below further entrenches an acknowledged circuit split over the proper interpretation and application of Section 1415(*l*)'s exhaustion requirement. Although the full scope of the split is not entirely clear, at least four circuits—including the First, Second, Seventh, and Eleventh—would likely agree with the Sixth Circuit that petitioners were required to exhaust their Title II and Section 504 claims. By

contrast, the Ninth Circuit would almost certainly not require exhaustion in these circumstances. This Court should grant certiorari to resolve the conflict.

1. The parties agree that the First, Second, Seventh, and Eleventh Circuits would concur with the Sixth Circuit that the IDEA's exhaustion requirement applies to this case and requires dismissal of petitioners' Title II and Section 504 claims. Pet. 12-16; Br. in Opp. 20-22. As they correctly explain, those courts of appeals generally interpret Section 1415(*l*) to require exhaustion whenever the IDEA can provide some relief for the injury alleged in the complaint, regardless of whether the plaintiff's civil action invokes the IDEA or actually requests the form of relief that might be available under that statute.[4]

The Third and Tenth Circuits also generally apply the injury-centered approach to Section 1415(*l*).[5] But both circuits appear to recognize a futility exception to the exhaustion requirement in circumstances where the underlying educational dispute between the parties has essentially been resolved and the only remaining issue is the availability of damages.[6] It is possible

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[4] See, *e.g.*, *Frazier* v. *Fairhaven Sch. Comm.*, 276 F.3d 52, 59-64 (1st Cir. 2002); *Polera* v. *Board of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 486-491 (2d Cir. 2002); *Charlie F.* v. *Board of Educ. of Skokie Sch. Dist.*, 98 F.3d 989, 991-993 (7th Cir. 1996); *N.B., by her mother and next friend, D.G.* v. *Alachua Cnty. Sch. Bd.*, 84 F.3d 1376, 1378-1379 (11th Cir. 1996) (per curiam), cert. denied, 519 U.S. 1092 (1997).

[5] See, *e.g.*, *Batchelor* v. *Rose Tree Media Sch. Dist.*, 759 F.3d 266, 272-273, 276-277 (3d Cir. 2014); *Cudjoe* v. *Independent Sch. Dist. No. 12*, 297 F.3d 1058, 1066-1068 (10th Cir. 2002).

[6] See, *e.g.*, *Batchelor*, 759 F.3d at 280 (favorably citing *Vicky M.* v. *Northeastern Intermediate Unit 19*, 486 F. Supp. 2d 437, 452-455 (M.D. Pa. 2007), for proposition that "exhaustion would be

that the Third and Tenth Circuits would hold that exhaustion is not required here, because petitioners seek no further educational services for E.F. from respondents, and the only outstanding dispute is over petitioners' request for money damages. See p. 8, *supra*.

2. By contrast, the en banc Ninth Circuit has expressly rejected the "injury-centered" interpretation of Section 1415(*l*) in favor of a "relief-centered" approach. *Payne* v. *Peninsula Sch. Dist.*, 653 F.3d 863, 874 (2011), cert. denied, 132 S. Ct. 1540 (2012), overruled on other grounds by *Albino* v. *Baca*, 747 F.3d 1162 (9th Cir.), cert. denied, 135 S. Ct. 403 (2014). Under the Ninth Circuit's interpretation, "[t]he IDEA's exhaustion requirement applies to claims only to the extent that the relief *actually sought by the plaintiff* could have been provided by the IDEA." *Ibid.* The court has explained that exhaustion is required in three circumstances: (1) "when a plaintiff seeks an IDEA remedy or its functional equivalent"; (2) when "a plaintiff seeks prospective injunctive relief to alter an IEP or the educational placement of a disabled student"; and (3) when "a plaintiff is seeking to enforce rights that arise as a result of a denial of a [FAPE]," whether or not the claim is pled as a violation of the IDEA. *Id.* at 875.

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futile where plaintiffs sought damages for physical abuse and where no other educational issues needed resolution"); *Muskrat* v. *Deer Creek Pub. Sch.*, 715 F.3d 775, 785-786 (10th Cir. 2013) (holding that exhaustion was not required where parents had resolved their educational dispute without formally invoking IDEA administrative procedures, leaving only their claim for damages unresolved).

As petitioners explain (Pet. 17), the Ninth Circuit's approach does not require exhaustion of their Title II and Section 504 claims against respondents. There is no dispute that those claims do not fall within the first or second categories identified in *Payne*. And although respondents assert that this case falls within the third category—because petitioners' claims "arise[] only as a result of a denial of a FAPE"—they are mistaken. Br. in Opp. 28 (quoting *Payne*, 653 F.3d at 880); see Pet. App. 11 (stating that petitioners "in effect" allege the denial of a FAPE).

Payne's third category encompasses claims in which the denial of a FAPE is "the basis for the cause of action," *i.e.*, where the claim either arises under the IDEA itself or directly invokes the IDEA's "substantive standards." 653 F.3d at 875.[7] Here, however, petitioners' Title II and Section 504 claims are not based on the denial of a FAPE and do not require petitioners to establish a violation of the IDEA's "substantive standards." The Ninth Circuit—unlike the Sixth Circuit—would therefore not have dismissed those claims for failure to exhaust under Section 1415(*l*).

3. Petitioners are correct (Pet. 18) that the circuit conflict discussed above is unlikely to resolve itself without this Court's intervention. The Ninth Circuit's

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[7] The Ninth Circuit indicated that *Payne*'s third category thus includes IDEA claims, Section 504 claims expressly "premised on the denial of a FAPE," and substantive due process claims in which the plaintiff asserts that he has been deprived of a FAPE. *Payne*, 653 F.3d at 875, 883; see *id.* at 879 (indicating that exhaustion is not required when complaint "does not either *rely on rights created by the IDEA* or seek remedies available under the IDEA) (emphasis added); see also Pet. 16 n.8.

en banc decision in *Payne* expressly overruled circuit precedent that had previously applied the same injury-centered approach that has been adopted by many of the other circuits. See 653 F.3d at 873-874 (expressly overruling those aspects of *Robb* v. *Bethel Sch. Dist. No. 403*, 308 F.3d 1047 (9th Cir. 2002), which adopted the injury-centered approach). The Sixth Circuit required exhaustion here despite Judge Daughtrey's express recognition that the panel majority's analysis conflicted with *Payne*. Pet. App. 27-30. And the Second, Third, and Tenth Circuits have either adopted or reaffirmed the injury-centered approach even after *Payne* expressly rejected that approach. See *Batchelor*, 759 F.3d at 276-278; *Baldessarre* v. *Monroe-Woodbury Cent. Sch. Dist.*, 496 Fed. Appx. 131, 134 (2d Cir. 2012); *A.F.* v. *Espanola Pub. Sch.*, 801 F.3d 1245, 1247 (10th Cir. 2015).

C. The Question Presented Is Important And Recurring, And The Court Should Resolve It In This Case

The proper application of Section 1415(*l*)'s exhaustion requirement to non-IDEA claims presents an important and recurring question of federal law. Whether and how the exhaustion requirement applies to circumstances where the plaintiff does not directly request relief that is available under the IDEA is frequently litigated, as the petition, brief in opposition, and discussion above all make clear. See Pet. 12-18; Br. in Opp. 20-28. Moreover, the courts are intractably divided over those questions. See pp. 18-22, *supra*.

The proper resolution of that question has considerable practical significance, especially for plaintiffs seeking to vindicate the rights of children with disabilities. If petitioners' (and the government's) interpre-

tation of Section 1415(*l*) is correct, children with disabilities and their parents are being forced to needlessly pursue the IDEA administrative process—at considerable expense and inconvenience—even in circumstances when that process will not provide them with the relief that they actually seek. This case offers the Court a suitable vehicle in which to clarify the law and effectuate Congress's goal of preserving freestanding causes of action—apart from the IDEA—as viable mechanisms for protecting children with disabilities.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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